

# **EXHIBIT HH**

# Civil No. CV03 00385 SOM-LEK

## (Copyright)

WAYNE BERRY, a Hawaii citizen;  
Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE, INC., a California corporation; H.E.S. TRANSPORTATION SERVICES, INC., a California corporation; CALIFORNIA PACIFIC CONSOLIDATORS, INC., a California corporation; JEFFREY P. GRAHAM and PETER SCHAUL, California citizens; MARK DILLON and TERESA NOA, BRIAN CHRISTENSEN, Hawaii citizens; FLEMING COMPANIES, INC., an Oklahoma corporation; C & S LOGISTICS OF HAWAII, LLC, a Delaware LLC; C & S WHOLESALE GROCERS, INC., a Vermont corporation; C & S ACQUISITIONS LLC; FOODLAND SUPER MARKET, LIMITED, a Hawaii corporation; HAWAII TRANSFER COMPANY, LIMITED, a Hawaii Corporation, RICHARD COHEN, a New Hampshire citizen ES3, LLC, a Delaware Limited Liability Company, MEL VIN PONCE, SONIA PURDY, JUSTIN FUKUMOTO, ALFREDDA WAIOLAMA, JACQUELINE RIO, Hawaii citizens; JESSIE GONZALES, LUIZ RODRIGUES, AL PEREZ and PATRICK HIRAYAMA, California citizens; GUIDANCE SOFTWARE, LLC, a California, LLC; MICHAEL GURZI, a California citizen; ALIX PARTNERS, LLC, a Delaware LLC ; DOE INDIVIDUALS 2-350; DOE PARTNERSHIPS, CORPORATIONS and OTHER DOE ENTITIES 2-20,

Defendants.

Berry v Hawaiian Express Plaintiff Exhibit 90

**ACTUAL DAMAGES - DIRECT INFRINGEMENT  
BASED ON EULA  
NO LESS THAN \$ 2 MILLION EACH**

1. FLEMING COMPANIES, INC. ....	\$ 2 MILLION DOLLARS
2. MARK DILLON .....	\$ 2 MILLION DOLLARS
3. TERESA NOA .....	\$ 2 MILLION DOLLARS
4. MELVIN PONCE .....	\$ 2 MILLION DOLLARS
5. SONIA PURDY .....	\$ 2 MILLION DOLLARS
6. JUSTIN FUKUMOTO .....	\$ 2 MILLION DOLLARS
7. ALFREDDA WAIOLAMA .....	\$ 2 MILLION DOLLARS
8. JACQUELINE RIO .....	\$ 2 MILLION DOLLARS

**TOTAL \$16 MILLION DOLLARS**

**ACTUAL DAMAGES - DIRECT INFRINGEMENT  
BASED ON \$1,772 PER CONTAINER  
NO LESS THAN \$ 2.7 MILLION EACH**

1. FLEMING COMPANIES, INC.....	\$ 2.7 MILLION DOLLARS
2. MARK DILLON .....	\$ 2.7 MILLION DOLLARS
3. TERESA NOA .....	\$ 2.7 MILLION DOLLARS
4. MELVIN PONCE .....	\$ 2.7 MILLION DOLLARS
5. SONIA PURDY .....	\$ 2.7 MILLION DOLLARS
6. JUSTIN FUKUMOTO .....	\$ 2.7 MILLION DOLLARS
7. ALFREDDA WAIOLAMA .....	\$ 2.7 MILLION DOLLARS
8. JACQUELINE RIO .....	\$ 2.7 MILLION DOLLARS

**TOTAL \$ 21.6 MILLION DOLLARS**

**FLEMING ACTUAL DAMAGES - VICARIOUS INFRINGEMENT  
BASED EULA  
NO LESS THAN \$ 2 MILLION EACH**

1. HAWAIIAN EXPRESS SERVICE, INC. ....	\$ 2 MILLION DOLLARS
2. H.E.S. TRANSPORTATION SERVICES, INC. ....	\$ 2 MILLION DOLLARS
3. CALIFORNIA PACIFIC CONSOLIDATORS, INC. ...	\$ 2 MILLION DOLLARS
4. JEFFREY P. GRAHAM.....	\$ 2 MILLION DOLLARS
5. PETER SCHAUL .....	\$ 2 MILLION DOLLARS
6. JESSIE GONZALES .....	\$ 2 MILLION DOLLARS
7. LUIZ RODRIGUES .....	\$ 2 MILLION DOLLARS
8. AL PEREZ .....	\$ 2 MILLION DOLLARS
9. PATRICK HIRAYAMA .....	\$ 2 MILLION DOLLARS
10. MARK DILLON .....	\$ 2 MILLION DOLLARS
11. TERESA NOA .....	\$ 2 MILLION DOLLARS
12. MELVIN PONCE .....	\$ 2 MILLION DOLLARS
13. SONIA PURDY .....	\$ 2 MILLION DOLLARS
14. JUSTIN FUKUMOTO .....	\$ 2 MILLION DOLLARS
15. ALFREDDA WAIOLAMA .....	\$ 2 MILLION DOLLARS
16. JACQUELINE RIO .....	\$ 2 MILLION DOLLARS

**TOTAL    \$ 32 MILLION DOLLARS**

**FLEMING ACTUAL DAMAGES - VICARIOUS INFRINGEMENT  
BASED ON \$1,772 PER CONTAINER  
NO LESS THAN \$ 2.7 MILLION EACH**

1. HAWAIIAN EXPRESS SERVICE, INC. ....	\$ 2.7 MILLION DOLLARS
2. H.E.S. TRANSPORTATION SERVICES, INC. ....	\$ 2.7 MILLION DOLLARS
3. CALIFORNIA PACIFIC CONSOLIDATORS, INC. ...	\$ 2.7 MILLION DOLLARS
4. JEFFREY P. GRAHAM.....	\$ 2.7 MILLION DOLLARS
5. PETER SCHAUL .....	\$ 2.7 MILLION DOLLARS
6. JESSIE GONZALES .....	\$ 2.7 MILLION DOLLARS
7. LUIZ RODRIGUES .....	\$ 2.7 MILLION DOLLARS
8. AL PEREZ .....	\$ 2.7 MILLION DOLLARS
9. PATRICK HIRAYAMA .....	\$ 2.7 MILLION DOLLARS
10. MARK DILLON .....	\$ 2.7 MILLION DOLLARS
11. TERESA NOA .....	\$ 2.7 MILLION DOLLARS
12. MELVIN PONCE .....	\$ 2.7 MILLION DOLLARS
13. SONIA PURDY .....	\$ 2.7 MILLION DOLLARS
14. JUSTIN FUKUMOTO .....	\$ 2.7 MILLION DOLLARS
15. ALFREDDA WAIOLAMA .....	\$ 2.7 MILLION DOLLARS
16. JACQUELINE RIO .....	\$ 2.7 MILLION DOLLARS

**TOTAL    \$ 43.2 MILLION DOLLARS**

## DEFENDANT'S PROFITS FLEMING'S GROSS RECEIPTS – BASED ON “MOR”

The defendant's gross revenue is all of the defendant's receipts from the use of a work containing or using the copyrighted work. The plaintiff has the burden of proving the defendant's gross revenue by a preponderance of the evidence.

1. GROSS REVENUE (10 WEEKS) = \$ 2.3 BILLION DOLLARS

Expenses are all operating costs and production costs incurred in producing the defendant's gross revenue. The defendant has the burden of proving the defendant's expenses by a preponderance of the evidence.

2. OPERATING AND PRODUCTION COSTS = \$ \_\_\_\_\_ DOLLARS

Unless you find that a portion of the profit from the use of a work containing or using the copyrighted work is attributable to factors other than use of the copyrighted work, all of the profit is to be attributed to the infringement. The defendant has the burden of proving the portion or percentage of the profit, if any, attributable to factors other than infringing the copyrighted work.

3. REVENUE NOT ATTRIBUTABLE TO INFRINGING = \$ \_\_\_\_\_ DOLLARS

## ANSWER

FLEMING'S PROFITS = #1 - #2 - #3 = \$ \_\_\_\_\_ DOLLARS

**DEFENDANT'S PROFITS  
FLEMING'S GROSS RECEIPTS – BASED ON “PRO FORMA”  
& KINRICH EXHIBIT 5**

The defendant's gross revenue is all of the defendant's receipts from the use of a work containing or using the copyrighted work. The plaintiff has the burden of proving the defendant's gross revenue by a preponderance of the evidence.

**1. GROSS REVENUE (10 WEEKS) = \$ 60 MILLION DOLLARS**

Expenses are all operating costs and production costs incurred in producing the defendant's gross revenue. The defendant has the burden of proving the defendant's expenses by a preponderance of the evidence.

**2. OPERATING AND PRODUCTION COSTS = \$ \_\_\_\_\_ DOLLARS**

Unless you find that a portion of the profit from the use of a work containing or using the copyrighted work is attributable to factors other than use of the copyrighted work, all of the profit is to be attributed to the infringement. The defendant has the burden of proving the portion or percentage of the profit, if any, attributable to factors other than infringing the copyrighted work.

**3. REVENUE NOT ATTRIBUTABLE TO INFRINGING = \$ \_\_\_\_\_ DOLLARS**

**ANSWER**

**FLEMING'S PROFITS = #1 - #2 - #3 = \$ \_\_\_\_\_ DOLLARS**



## DAMAGE SUMMARY

Fleming

Actual Damages – Direct Infringement	\$	_____
Actual Damages – Vicarious Infringement	\$	_____
Fleming's Profits	\$	_____
Fleming Total	\$	_____

Mark Dillon

Actual Damages – Direct Infringement	\$	_____
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Teresa Noa

Actual Damages – Direct Infringement	\$	_____
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Melvin Ponce

Actual Damages – Direct Infringement	\$	_____
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Sonia Purdy

Actual Damages – Direct Infringement	\$	_____
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Justin Fukumoto

Actual Damages – Direct Infringement	\$	_____
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Alfreeda Waiolama

Actual Damages – Direct Infringement	\$	_____
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Jacqueline Rio

Actual Damages – Direct Infringement	\$	_____
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